



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

WTI/167904

PRELIMINARY RECITALS

Pursuant to a petition filed August 8, 2015, under Wis. Stat. § 49.85(4), to review a decision by the Wisconsin Works (W-2) in regard to W2 benefit recovery, a hearing was held on October 20, 2015, by telephone.

The issue for determination is whether the Department correctly sought to intercept the petitioner's income tax refund to collect an overpayment of W-2 benefits. The hearing record was held open for three days for additional documentation from the agency, which was received.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: [REDACTED] Quality Assur. Analyst
Forward Service Corporation

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is currently a resident of Grant County.
2. On July 17, 2015, the Department issued a written notice to the petitioner advising that it intended to intercept her state income tax refund to collect \$729 in alleged W-2 overpayments made on her behalf from April 22 through May 31, 2014 (claims # [REDACTED], # [REDACTED], # [REDACTED]). A \$7.25 collection fee was added to the claim amounts. The petitioner appeals therefrom.

3. The petitioner previously received benefits from Illinois. She moved to Wisconsin in February 2014, and contacted the local agency in an effort to apply for FS and W2 benefits. The petitioner was not eligible for W2 payments until her Illinois benefits ended. The Illinois payments ended June 6, 2015, per an Illinois Department of Human Services notification. The petitioner used those benefits on her Illinois "Link" card several times in May 2014. *See*, Exhibit 2.
4. The petitioner enrolled in the Wisconsin W2 work program on April 22, 2014. As a result of her participation in the program, she was issued W2 cash benefits of \$195 for April 22-30, \$326 for May 2014, and \$653 for June 2014. The prorated amount for the June 1- 15, 2014 period was \$338.
5. The agency's proof of receipt of Illinois cash benefits after June 6, 2014, was inadequate.
6. On September 25, 2014, the county W-2 agency issued written *Wisconsin Works (W-2) Overpayment Notices* to the petitioner. The *Notices* advised the petitioner that she had been overpaid \$859 in W2 benefits for the April 22 through June 30, 2014, period (although June was actually a partial amount for that month). The *Notices* advise: "you may request a W-2 Fact Finding Review if you do not agree with the W-2 decision...You must ask for the review within 45 days from the date of this notice..." The petitioner filed a Fact Finding request regarding her W-2 overpayment with the local agency on September 26, 2014. The local agency made two unsuccessful attempts to telephone the petitioner to discuss her request. The hearing record contains no evidence that the local agency issued the required *Fact Finding Review Appointment Notice* form to the petitioner, and apparently no Fact Finding Review was ever scheduled.
7. The petitioner has made no voluntary payments toward the W2 overpayment liability. A *Repayment Agreement* was sent to the petitioner on October 2, 2014, and three dunning notices (April 2, 2015, May 5, 2015, June 2, 2015) were issued when the petitioner made no payments against the debts. The petitioner continued to participate in W2 intermittently for several months after the overpayment notification; it appears that the petitioner made a limited involuntary repayment through recoupment from her W2 checks in 2014, which accounts for the reduction of claim # [REDACTED] (June 2014) to \$208.00 by the time interception was sought.

DISCUSSION

Wis. Stat. § 49.85 provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of food stamps, overpayment of W-2 benefits, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department of Workforce Development must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at § 49.85(3).

The hearing right is described in Wis. Stat. § 49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues *that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.*

(emphasis added)

The petitioner has not had a prior opportunity for hearing on the merits of the overpayment. She timely asked for a Fact Finding, and was not given a Fact Finding date, which is contrary to policy. *W-2 Manual*, §12.2.5. Therefore, I must reach the merits of the W2 overpayment decision.

The petitioner asserts that there was no overlap between her Illinois and Wisconsin benefits. The agency has the burden of proving an overpayment by a preponderance of the credible evidence. The agency met its burden with respect to the claims for April (prorated) and May 2014. The agency produced a Notice of Change from the Illinois Department of Human Services, dated April 29, 2014. It declares, “beginning JUNE 2014 your benefits will change as follows: YOUR CASH AND MEDICAL BENEFITS WILL STOP.” It further identifies a “Date of Change” of June 6, 2014. This Notice implies that Illinois cash benefits were issued to the petitioner for April and May, creating an overlap. The petitioner’s documentation to the contrary was her printouts titled “Electronic Transaction Activity” from her Illinois EBT Link Card. The transaction reports show the petitioner’s use of her card four times in May 2014, which supports the agency’s position that she received Illinois benefits in May, and was overpaid Wisconsin benefits for that month. However, the transaction report for June shows no activity on the Illinois card for June, and a zero cash balance. The same is true for July. *See*, Exhibit 2. Based on the Notice of Change document, the latest date that I can conclude that the petitioner received duplicate state cash benefits was June 6, 2014. I will remand the case for a downward correction of the June overpayment claim (to approximately \$130 from the original \$315).

Finally, the petitioner argued that the overpayment was the agency’s fault, not hers. This assertion is based on her testimony that she truthfully reported the status of her Illinois benefits (which she testified she believed were closed by April) to the agency, so the Wisconsin agency should not have enrolled her in W2 in April. Overpayments caused by agency/administrative error are recoverable against the recipient:

10.3.1 W-2 Overpayments

W-2 overpayments may occur as a result of an error by either the participant or the W-2 agency. There are three types of overpayments:

1. **Administrative Error:** The W-2 agency commits an error that results in incorrect payments. This type of error is also known as non-client error.
2. **Inadvertent Household Error:** The W-2 participant reports incorrect information or fails to report information due to a misunderstanding or unintended error. This type of error is known as client error (CE).
3. **IPV:** The W-2 participant willfully reports incorrect information

...

10.3.3 Recovery of Overpayments for Open CSJ or W-2 T Cases

W-2 overpayments are recovered (sometimes referred to as recouped) at the rate of 10% per month from *CSJ* and *W-2 T* payments when resulting from an Inadvertent Household Error or Administrative Error. ...

10.3.4 Recovery of Overpayments for Closed Cases, or Unpaid Placements

Overpayment collections from persons in ... closed cases must be sought by the W-2 agency. *CARES* will automatically send out repayment agreements for new claims and dunning notices. The W-2 agency must negotiate an amount of repayment for each

program. Monthly repayments should be negotiated in an amount that will repay the overpayment within a reasonable length of time. In the event of unsuccessful collection efforts by the W-2 agency and after the third dunning notice is sent by CARES, the Department will begin centralized collection efforts.

W2 Manual, § 10.3.1. - .4.

The determination by the agency that the petitioner was overpaid is *partially* affirmed. The Department is required to recover all overpayments of public assistance benefits. See 45 C.F.R. § 233.20(a)(13)(I): "...Overpayment means a financial assistance payment received by or for an assistance unit for the payment month which exceeds the amount for which that unit was eligible....The State must take all reasonable steps necessary to promptly correct any overpayment." See also, Wis. Stat. §§ 49.125(1), 49.195(3). The Department may utilize tax intercept as a means of recovering the overpayment. Wis. Stat. § 49.85.

CONCLUSIONS OF LAW

1. The petitioner was overpaid W-2 benefits from April 22 through May 31, 2014, in the amount of \$521 (\$195 + \$326).
2. The petitioner was overpaid W-2 benefits from June 1 through 6, 2014.
3. After recalculating the June 2014 overpayment amount, the Department may certify the corrected sum as an amount due and may proceed with the action to intercept the petitioner's income tax refund.

THEREFORE, it is

ORDERED

That the petition is remanded to the Department with instructions to reduce the overpayment amount in accord with the Conclusions of Law above, within 10 days of the date of this Decision. In all other respects, the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

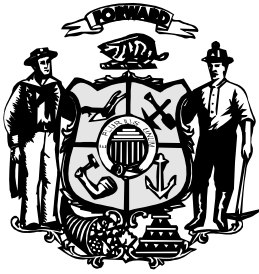
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on

those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 7th day of December, 2015

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on December 7, 2015.

Wisconsin Works (W-2)
Public Assistance Collection Unit